

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ELMER COTTON,

Plaintiff,

vs.

CITY OF LAS VEGAS, et al.,

Defendants.

Case No. 2:07-cv-00193-PMP-PAL

ORDER

(M/Appointment of Counsel - #2)
(M/Serve Summons and Complaint -#3)
(M/Initial Discovery - #4)

This matter is before the court on three of plaintiff's motions: his Request for Appointment of Counsel (#2), his Request for U.S. Marshal to Serve Summons and Complaint (#3), and his Request for Initial Discovery (#4). The plaintiff is proceeding in this action *pro se*.

The plaintiff filed his Complaint (#1) in this matter on February 14, 2007 alleging that the City of Las Vegas and its unknown employees and contractors demolished apartments on plots of land co-owned by the plaintiff without providing him prior notice in violation of the takings clause of the Fifth Amendment and the Uniform Code for the Abatement of Dangerous Buildings. The motions presently before the court were filed simultaneously with the complaint in this matter.

I. Request for Appointment of Counsel

The plaintiff requests that the court appoint him counsel because he "is on his Social Security pension and makes this request in the interest of justice."

In civil cases the district court may only appoint counsel to litigants proceeding *in forma pauperis* pursuant to 28 U.S.C. § 1915(e)(1). That statute does not authorize courts to require counsel to represent such litigants, but only to request such representation on a *pro bono* basis. See Mallard v. United States Dist. Ct., 490 U.S. 296, 304-05 (1989). The appointment of counsel pursuant to section 1915(e)(1) is limited to cases presenting exceptional circumstances. See Aldabe v. Aldabe, 616 F.2d

1 1089, 1093 (9th Cir. 1980) (per curiam). Appointment of counsel is not a matter of right. See Ivey v.
2 Board of Regents, 673 F.2d 266 (9th Cir. 1982).

3 An application for appointment of counsel must comply with criteria set forth in Bradshaw v.
4 Zoological Society of San Diego, 662 F.2d 1301 (9th Cir. 1981). Before appointing counsel to plaintiff,
5 the Ninth Circuit decision in Bradshaw requires the court to consider (1) plaintiff's financial resources,
6 (2) the efforts already made by plaintiff to secure counsel, and (3) plaintiff's likelihood of success on
7 the merits. Id. at 1318.

8 Applying the Bradshaw criteria, plaintiff's case does not merit the appointment of counsel. The
9 plaintiff's motion does not indicate he has met any of the Bradshaw criteria. The plaintiff did not file
10 an application to proceed *in forma pauperis*, and instead paid the filing fee. While the plaintiff may be
11 of limited financial means, his decision to pay the filing fee, rather than file an application to proceed *in*
12 *forma pauperis*, precludes the court from making a finding at this time that the plaintiff is indigent. The
13 plaintiff also does not indicate in his motion that he has made any attempt to retain or hire an attorney.
14 In addition, plaintiff has not established that he is likely to succeed on the merits. Therefore, the
15 plaintiff's request for an appointment of counsel will be denied.

16 **II. Request for the U.S. Marshal to Serve Summons and the Complaint**

17 The plaintiff asks the court for an order requiring the U.S. Marshal to serve summons and the
18 complaint on the named defendants, and for the Clerk of the Court to send him all necessary forms.
19 Although the plaintiff is proceeding in this action *pro se*, he is not entitled to service of summons and
20 the complaint by the U.S. Marshal or at government expense. Service of summons and the complaint at
21 government expense by the U.S. Marshal is only afforded to plaintiffs who have been granted *in forma*
22 *pauperis* status by the court upon proof of indigency that would prevent the individual from paying the
23 filing fee. See 28 U.S.C. § 1915(d). In the instant matter, the plaintiff has paid the filing fee and did
24 not file an application to proceed *in forma pauperis*. Therefore, he does not qualify under § 1915(d) for
25 service of summons and the complaint at government expense by the U.S. Marshal, and his motion to
26 do so will be denied.

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1 **III. Request for Initial Discovery**

2 The plaintiff's third motion requests the court "all the plaintiff to make initial discovery to
3 ascertain the names, titles, and addresses of all defendants . . . so that the U.S. Marshals can properly
4 serve the defendants." The plaintiff's request is not entirely clear, however, it appears he wants to
5 initiate discovery to ascertain the identities of the unknown employees and contractors of the City of
6 Las Vegas he names in his complaint as being responsible for the demolition of the apartments on his
7 land.

8 Although the plaintiff does not name the City of Las Vegas in the caption of the complaint, the
9 complaint itself refers to the City of Las Vegas as a defendant against which relief is sought. Since the
10 plaintiff does not need to conduct discovery in order to serve summons and the complaint on the City of
11 Las Vegas, the plaintiff must serve the City of Las Vegas in a manner authorized by law and within the
12 time limits imposed by Fed. R. Civ. P. 4(m).

13 With respect to the unknown City of Las Vegas employees and contractors, the plaintiff's
14 request for discovery to ascertain their identities is premature. Federal Rule of Civil Procedure 26(d)
15 governs the timing of discovery in cases in federal court, and provides in pertinent part that "a party
16 may not seek discovery from any source before the parties have conferred as required by Rule 26(f)."
17 The Local Rules of Practice provide that "[c]ounsel for the plaintiff shall initiate the scheduling of the
18 Fed. R. Civ. P. 26(f) meeting within thirty (30) days after the first defendant answers or otherwise
19 appears." See L.R. 26-1(d). At a Rule 26(f) conference, the parties must discuss, among other items,
20 when the parties shall make the mandatory disclosures required by Rule 26(a)(1). If the plaintiff
21 consults Rule 26(a)(1), he will discover that it likely provides for the discovery he seeks. Therefore, his
22 motion will be denied.

23 Accordingly,

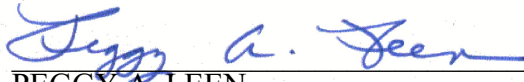
24 **IT IS ORDERED**

- 25 1. Plaintiff's Request for Appointment of Counsel (#2) is DENIED.
26 2. Plaintiff's Request for U.S. Marshal to Serve Summons and Complaint (#3) is
27 DENIED.

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1 3. Plaintiff's Request for Initial Discovery (#4) is DENIED.

2 Dated this 29th day of March, 2007.

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5 PEGGY A. LEEN
6 UNITED STATES MAGISTRATE JUDGE
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